

employee plans news

PROTECTING RETIREMENT BENEFITS THROUGH EDUCATING CUSTOMERS

Internal Revenue Service
Tax Exempt and Government
Entities Division

A Publication of Employee Plans

EP's Invigorated Enforcement Program

Steven T. Miller, IRS Tax Exempt and Government Entities Commissioner, spoke before the Los Angeles Benefits Conference on January 28, 2005 and made the following key points about the EP Enforcement Program:

*I want to talk with you today about **compliance**. It is an important topic, a matter of special concern to the Commissioner and to Congress, and one that now receives a great deal of attention within the IRS. . .*

*Let me begin, however, by offering some words of **reassurance about the continuing respect** that I have personally, and that we in TE/GE have institutionally, for the professionalism and dedication of the benefits community. We have long appreciated, and prided ourselves, on the close and cooperative relationship we have built up with the benefits practitioners. I very much want this relationship to continue.*

We are going to help it continue by maintaining our robust outreach programs, a vigorous and improved determination program, our programs in which you come to us to correct problems, and our commitment to do all we can to help you and your clients comply.

*However, I am **sorry to say** that the time has come to deliver a message to a small number within the benefits community who have begun to taint our important public purposes with abuse.*

*As I set out to deliver what I intend to be a **strong message**, I am confident that I am among friends and that we are of one mind about this. I know you recognize that in keeping our community compliant, and in rooting out abuse, we are creating the environment in which professionalism can flourish, in which we can live up to the highest standards of our professions, in which we can carry forward the important public mission that has been placed in our hands, and in which we can do our work without concern that abusers and shady operators will steal our livelihoods by pandering to those who want easy, and clever, but ultimately destructive ways around the rules.*

*So I am here today to also discuss how the Employee Plans office of TE/GE needs to **change in order** to ensure that the IRS is effective in the future in its mission of promoting and protecting retirement benefits. . .*

*In my mind, we need to **rebalance our efforts** with the goal of establishing a prominent IRS enforcement presence in the benefits community. And we need to do it at once. . .*

*Let me build the case for an **invigorated enforcement program** by laying out three rationales.*

First, the TE/GE community, as we all know, is immense. . .

Second, we need to be involved with a vigorous enforcement program because we are finding increasing numbers of abusive transactions in every segment of the TE/GE community – every segment! . . .

The third and final rationale for our decision to re-invigorate the EP enforcement program is that we have been away from this work for too long. . .

The continuing challenge for all of us – for you as individual practitioners, and for me as Commissioner of TE/GE – is to ensure that those **who do not follow** reasonable practices are identified and **appropriately sanctioned**.

To the extent the **bad actors** are not sanctioned, or disbarred from practice before the Service, those of you – the overwhelming majority of you – who conduct your practices in an ethical manner, will find yourselves at a **competitive disadvantage**. And we, at the Service, faced with abuse in the EP area, will have to act broadly and boldly to crack down.

So I **ask you for two things**. First, if a brown envelope shows up on your desk inviting you or your clients to get involved with a deal that sounds too good to be true, please **steer your clients away** from it. And after you have done that, **please forward** the brown envelope and its contents to us. Let us move to level the playing field, and to level it along an ethical plane . . .

Let me wind up. I've spoken about the **need for change** and the **steps we are taking** to accomplish that change. In closing, though, I want to come back to what I started with. And that is that there is **much that should not change** within our Employee Plans function.

TE/GE and EP are unique within the IRS. Our focus is not on revenue generation but on ensuring that our customers **have what they need to comply**.

We are going **to retain that which makes us unique**: That we protect the public interest; that we are innovative; and that we continue to value stakeholder education and partnership.

Nothing I have said today should **detract from our continued commitment** to our longstanding ways of helping you and your clients comply:

- A vigorous determination letter program,
- A robust outreach program, and
- The ability to come to us to correct problems.

How we administer these programs may shift to allow us to bring about needed **changes in direction and emphasis**, but the programs and all they have provided in the past will remain.

For a complete transcript of Mr. Miller's remarks, click [here](#) .

EP Clarifies Short Service Memo

On February 4, 2005, Carol Gold, Director of Employee Plans, issued a [letter to Brian Graff](#), Executive Director/CEO of ASPPA, and to others, which clarifies a memorandum issued on October 22, 2004, regarding short service employees. (See the [November 2004 Special Edition](#) for more.)

The [October 22, 2004 memorandum](#) addresses certain schemes which effectively limit the amounts payable under a retirement plan to a small number of highly compensated employees by limiting participation under the plan to highly compensated employees and to rank and file employees with short periods of service (such as periods of a few weeks or even a few days). Concerns were expressed that this memorandum might be construed to render invalid a number of plan designs that have long been considered acceptable by the IRS. The letter from Carol Gold confirms that the October memorandum was focused on plans that attempt to satisfy the nondiscrimination tests by using nominal contributions or benefits for the lowest paid non-highly compensated employees where the nominal contributions or benefits result from very short periods of service. The letter also states that the October memorandum is not intended to suggest that plan designs that have consistently and repeatedly approved by the IRS are now in question. •

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